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February 5, 2020

Via Electronic Filing and First-Class Mail

Richard L. Whitt
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, South Carolina 29063

Re: Deficient Discovery Responses
Ganymede Solar, LLC v. Dominion Energy South Carolina, Inc.
Docket No. 2019-390-E

Dear Mr. Whitt:

I am writing on behalf of Dominion Energy South Carolina, Inc. ("DESC") to address extensive deficiencies in *Ganymede Solar, LLC's Objections/Responses to Company's First Set of Discovery Requests* (the "Objections") that you filed with the Public Service Commission of South Carolina (the "Commission") on behalf of Ganymede Solar, LLC ("Ganymede"), on February 4, 2020, in the above-referenced docket.

Specifically, the Objections utilize 19 numbered paragraphs to disclaim **any** obligation to adequately respond to *Dominion Energy South Carolina, Inc.'s First Set of Discovery Requests* (the "Discovery Requests"), properly filed on January 17, 2020, in the above-referenced docket. Furthermore, the Objections reference Ganymede's *Motion for Protective Order* (the "Motion"), filed simultaneously therewith, to argue that Ganymede not only has no obligation to respond to the Discovery Requests, but also that the Discovery Requests are "inappropriate" and "serve no legitimate discovery purpose." Objections at 2.

There is no basis for Ganymede's bad faith position. To be clear, the Discovery Requests are appropriate and serve a legitimate discovery purpose:

- S.C. Code Ann. Regs. § 103-833(A) mandates that "**[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered** unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." (emphasis added).

- S.C. Code Ann. Regs. § 103-833(B) mandates that "**[a]ny party of record** may serve upon other parties or parties of record written interrogatories to be answered by the party served." (emphasis added).

- S.C. Code Ann. Regs. § 103-833(C) mandates that "**[a]ny party of record** may serve upon other parties or parties of record requests for production of documents and things to be answered by the party served." (emphasis added).

- Rule 36 of the South Carolina Rules of Civil Procedure (which controls pursuant to S.C. Code Ann. Regs. § 103-825) mandates that "**[a] party may serve upon any other party** a written request for admission, for the purposes of the pending action only." (emphasis added).

The Objections and Motion exhibit a blatant disregard for these clear rules. DESC is a party of record in this docket because **Ganymede named DESC as Respondent[1] in its Petition**. The Discovery Requests seek, among other things, information related to (i) the interconnection agreement, (ii) Ganymede's financing efforts, and (iii) how the variable integration charge language in DESC's standard power purchase agreement has adversely affected Ganymede—in each case, related to claims Ganymede has made in its own filings and clearly "material relevant to the subject matter involved in the pending proceeding."

Yet, Ganymede has unreasonably refused to adequately respond to any item contained in the Discovery Requests—including a refusal to even acknowledge that Ganymede read its interconnection agreement prior to signing it.

The position that Ganymede advances in the Motion—that the Discovery Requests are improper because "Ganymede is not seeking relief from [DESC]"—is at best misguided, and at worst, **evasive**. Surely, Ganymede would acknowledge that every party seeking relief in front of the Commission seeks such relief from only one entity—the Commission. As such, Ganymede's argument necessarily means that discovery is **always improper**. This logic lacks even a scintilla of merit or support[2] and there is not "good ground to support it" as required by Rule 11 of the South Carolina Rules of Civil Procedure ("SCRCP").[3] Indeed, neither the Motion nor the Objections cites any precedent of South Carolina courts or this Commission that would support this argument. Thus, it appears that not only are the responses to the Discovery Requests inadequate, but also that they were not submitted in good faith.

As a result, please be advised that if Ganymede does not adequately respond to the Discovery Requests in accordance with the rules and regulations governing these proceedings

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[1] Indeed, the Commission has ruled that where a Petitioner seeks relief under an interconnection agreement pursuant to a Motion to Maintain Status Quo, DESC should be "a party to the docket without having to intervene in it." *Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company*, 2019 WL 202765, at *1 (S.C.P.S.C. 2019).

[2] The Commission has held that where it conducts a *de novo* hearing, "its discovery rules are clearly applicable." *Application of Daufuskie Island Utility Company*, 2017 WL 4864953, at *1 (S.C.P.S.C. 2017).

[3] Rule 11 of the SCRCP requires that the "written or electronic signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief **there is good ground to support it; and that it is not interposed for delay**." (emphasis added).

within three business days of the date hereof, DESC will be forced to pursue remedies available to it under South Carolina law, the rules and regulations of the Commission, and the SCRCP—which may include recovery of expenses (including attorneys' fees),[4] an order from the Commission compelling discovery responses,[5] the imposition of sanctions by the Commission,[6] and dismissal of the action in *toto*.[7]

Finally, please consider this the "reasonable notice" required prior to the submission of a Motion for Order Compelling Discovery under Rule 37 of the SCRCP. DESC sincerely hopes that that the deficiencies cited in this letter will be remedied and the extraordinary circumstances necessitating the filing of such a motion are avoided.

Sincerely,

J. Ashley Cooper

JAC:hmp
cc: (Via Electronic Mail and First-Class Mail)
Alexander W. Knowles, Esquire
Christopher Huber, Esquire
Jo Anne Wessinger Hill, Esquire

[4] South Carolina courts have awarded expenses (including attorneys' fees) for abuses of the discovery process pursuant to Rule 37 and Rule 11 of the SCRCP. *See*, *e.g.*, *Runyon v. Wright*, 471 S.E.2d 160 (S.C. 1996); *Ball v. Canadian American Exp. Co., Inc.*, 442 S.E.2d 620 (S.C. App. 1994).

[5] The Commission has expressly declared that "Motions to Compel before the Commission are properly brought in instances where a party upon whom discovery requests . . . are served **fails or refuses** to comply with the discovery requests without proper grounds for objection." *IN RE: Petition of the Office of Regulatory Staff to Establish Generic Proceeding Pursuant to the Distributed Energy Resource Program Act*, 2018 WL 488937, at *1 (S.C.P.S.C. 2018) (emphasis added).

[6] South Carolina courts have held that sanctions may be appropriate where a party files a "pleading, motion, or other paper in bad faith (i.e., **to cause unnecessary delay**) whether or not there is good ground to support it." *Runyon v. Wright*, 471 S.E.2d 160, 162 (S.C. 1996) (emphasis added).

[7] South Carolina courts have held that dismissal of actions under Rule 37 of the SCRCP is appropriate for certain abuses of the discovery process. *See*, *e.g.*, *Barnette v. Adams Bros. Logging, Inc.*, 586 S.E.2d 572 (S.C. 2003); *In re Anonymous Member of South Carolina Bar*, 552 S.E.2d 10 (S.C. 2001).